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7 DANIEL VITOR MORILHA,
8 Plaintiff,
9 v.
10 PEOPLE OF THE UNITED STATES OF
11 AMERICA,
12 Defendant.

Case No. 23-cv-05008-JST

**ORDER DENYING MOTION TO
PERPETUATE TESTIMONY AND
MOTION TO EXTEND TIME FOR
SERVICE**

Re: ECF Nos. 27, 29

13 Now before the Court is Plaintiff Daniel V. Morilha's petition to perpetuate testimony and
14 motion to extend time for service. ECF Nos. 25, 29. The Court will dismiss the petition and deny
15 the motion to extend time for service.

16 Morilha filed an amended petition to perpetuate testimony in this action on November 28,
17 2023. ECF No. 25. He brings this action following the Court's dismissal of his related case,
18 *Morilha v. Superior Court of California County of Santa Clara*, Case No. 22-cv-3565-JST
19 ("Morilha I"), for lack of jurisdiction. Morilha now seeks "to perpetuate the testimony of three
20 key witnesses to his complaint" pursuant to Federal Rule of Civil Procedure 27. ECF No. 25 at 2.
21 He contends that "their independent testimonies will help to understand the scope of his
22 complaint," and "that some of them might have taken part either voluntarily or involuntarily into a
23 broader investigation[.]" *Id.*

24 Rule 27 requires that a person who seeks to perpetuate testimony demonstrate that he
25 "expects to be a party to an action cognizable in a United States court but cannot presently bring it
26 or cause it to be brought." Fed. R. Civ. P. 27(a)(1)(A). Morilha cannot satisfy this requirement,
27 because he has already brought an action before this Court—namely, *Morilha I*. While Morilha
claims he was unable to obtain discovery in his prior case, *see* ECF No. 27 at 2, that was because

1 it was dismissed for lack of jurisdiction. *See Morilha I.*, ECF No. 50 at 2–3. Thus, the
2 deficiencies here are twofold: Morilha was able to bring the action and it was ultimately found
3 *not to be cognizable*.

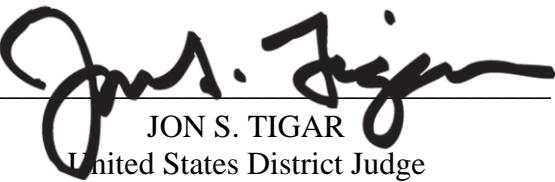
4 Accordingly, Morilha’s petition to perpetuate testimony pursuant to Fed. R. Civ. P. 27 is
5 dismissed.

6 Because Morilha’s motion for extending time for service is based upon his “intention to
7 perpetuate testimonies,” ECF No. 29 at 1, it will be denied as moot.

8 The Clerk shall close this case.

9 **IT IS SO ORDERED.**

10 Dated: January 26, 2024



11 JON S. TIGAR
12 United States District Judge